

Filed
MAY - 8 2008

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

ADR
E-filing

§
Sept
SI
#14

1 OTTO O. LEE, SBN 173987
olee@iplg.com
2 JOHN V. MEJIA, SBN 167806
jmejia@iplg.com
3 MARGAUX A. AVIGUETERO, SBN 244767
maviguetero@iplg.com
4 INTELLECTUAL PROPERTY LAW GROUP LLP
12 South First Street, Twelfth Floor
5 San Jose, California 95113
Telephone: (408) 286-8933
6 Facsimile: (408) 286-8932

7 Attorneys for Plaintiff
T-CROSS

8
9 THE UNITED STATES DISTRICT COURT
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 C08 02373

RS

12 T-CROSS, a South Korean sole proprietorship,

Case No.:

13 Plaintiff,

COMPLAINT FOR:

14 v.

15 MARKETING SPECIALISTS, INC, an Arkansas
16 corporation,

17 Defendant.

- (1) DECLARATORY JUDGMENT OF
NON-INFRINGEMENT OF PATENT;
(2) DECLARATORY JUDGMENT OF
INVALIDITY AND
UNENFORCEABILITY OF
TRADEMARK AND NON-
INFRINGEMENT OF TRADEMARK;
AND
(3) CANCELLATION OF FEDERAL
TRADEMARK REGISTRATION

18
19
20 Plaintiff T-Cross, for its Complaint against Defendant, Marketing Specialists, Inc.
21 ("Marketing Specialists"), alleges as follows:

22 NATURE OF THE ACTION

23 1. This action is based on the patent laws of the United States, Title 35 of the United
24 States Code, and the trademark laws of the United States, Title 15 of the United States Code,
25 sections 1051 *et seq.* Marketing Specialists has asserted rights under United States Design Patent
26 No. D495,208 (the "208 patent") and United States Trademark Registration No. 3004807 for
27 SHOTSHELL (the "SHOT SHELL Mark Registration") based on certain past activity by T-Cross,
28

1 and T-Cross contends that it has the right to engage in this activity without a license. True and
2 correct copies of the '208 patent and the electronic records for the SHOTSHELL Mark Registration
3 are attached hereto as Exhibits 1 and 2, respectively. T-Cross now seeks judicial declaration that it
4 does not infringe the '208 patent, the SHOTSHELL mark, and the SHOTSHELL Mark Registration;
5 that Marketing Specialists' SHOTSHELL mark is invalid and unenforceable; and requests the Court
6 to cancel Marketing Specialists' SHOTSHELL Mark Registration because the SHOTSHELL mark is
7 merely descriptive and should not have been allowed for federal registration by the United States
8 Patent and Trademark Office (the "USPTO").

9 THE PARTIES

10 2. Plaintiff T-Cross is a South Korean sole proprietorship with its headquarters at
11 Woolim e-Biz Center B/D, 210-21, Seongsu2-Ga, Seongdong-Gu, Seoul, Korea. John Kim is the
12 sole proprietor.

13 3. On information and belief, Defendant Marketing Specialists is a corporation existing
14 under the laws of the State of Arkansas, with its principal place of business at 416 Stribling Road,
15 Rogers, Arkansas, 72756. Marketing Specialists' registered agent as listed with the Arkansas
16 Secretary of State is located at 1100 Worthen Bank Building, Little Rock, Arkansas, 72201.

17 JURISDICTION

18 4. This is a civil action regarding allegations of patent infringement arising under the
19 patent laws of the United States, Title 35 of the United States Code, in which T-Cross seeks
20 declaratory relief under the Declaratory Judgment Act. Thus, the Court has subject matter
21 jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338, 2201, and 2202.

22 5. This is also a civil action regarding allegations of trademark infringement arising
23 under the trademark laws of the United States, Title 15 of the United States Code, sections 1051 *et*
24 *seq.*, in which T-Cross seeks declaratory relief under the Declaratory Judgment Act. Thus, the Court
25 has subject matter jurisdiction over this action pursuant to 15 U.S.C. §§ 1119, 1121 and 28 U.S.C. §§
26 1331, 1338, 2201, and 2202.

27 6. The Court has personal jurisdiction over Marketing Specialists because Marketing
28 Specialists has established certain minimum contacts with California such that the exercise of

1 personal jurisdiction over Marketing Specialists would not offend traditional notions of fair play and
2 substantial justice. Marketing Specialists has and continues to conduct business in the State of
3 California and within the Northern District of California.

4 VENUE

5 7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because the Court has
6 personal jurisdiction over Marketing Specialists.

7 INTRADISTRICT ASSIGNMENT

8 8. This is an Intellectual Property Action subject to district-wide assignment under
9 Local Rule 3-2(c).

10 FACTUAL BACKGROUND

11 9. T-Cross specializes in manufacturing and exporting stainless steel products, including
12 the TC-BS500 and the TC-BS1000 vacuum insulated beverage bottles (the "T-Cross bottles").

13 10. T-Cross used the "shotshell" wording in connection with the T-Cross bottles in 2007.

14 11. Marketing Specialists is a patent and trademark holder.

15 12. Marketing Specialists purports to own the '208 patent entitled "Beverage Vessel."
16 Records at the USPTO list Marketing Specialists as the present assignee for the '208 patent. See
17 Exhibit 1.

18 13. Marketing Specialists contends that the T-Cross bottles are covered by the '208 patent
19 and that T-Cross willfully and intentionally infringed the '208 patent entitling Marketing Specialists
20 remedies under Title 35 of the United States Code, including a trebling of damages.

21 14. T-Cross contends that the T-Cross bottles do not infringe on the '208 patent.

22 15. In addition, Marketing Specialists claims to be the rightful owner of the
23 SHOTSHELL mark and the SHOTSHELL Mark Registration for "thermal insulated bottles for
24 beverages." See Exhibit 2.

25 16. Marketing Specialists' alleged SHOTSHELL Mark Registration was registered on
26 October 4, 2005 and it has not become incontestable yet.

27 17. Marketing Specialists contends that it has been using the SHOTSHELL mark in
28 commerce since January 2005 in connection with its thermal insulated bottles for beverages.

1 18. Marketing Specialists contends that it is the prior user of the SHOTSHELL mark and
2 T-Cross' use of the "shotshell" wording infringed its trademark rights allegedly vested in the
3 SHOTSHELL mark and protected by the SHOTSHELL Mark Registration.

4 19. Marketing Specialists contends that T-Cross willfully and intentionally infringed the
5 SHOTSHELL mark and the SHOTSHELL Mark Registration entitling Marketing Specialists
6 remedies under the Lanham Act, including a trebling of damages.

7 20. On information and belief, Marketing Specialists has failed to insert federal
8 trademark registration notice on its thermal insulated bottles for beverages, its packaging of such
9 products, and advertising materials as required by 15 U.S.C. § 1111 to recover any damages.

10 21. Marketing Specialists sent emails to T-Cross on December 6, 2007, January 3, 2008,
11 and further correspondences in writing referring to its '208 patent and the SHOTSHELL Mark
12 Registration, and expressly threatened T-Cross with civil litigation and with recovery of treble
13 damages.

14 22. Upon notification of Marketing Specialists' claims against T-Cross, T-Cross
15 immediately ceased marketing and selling the T-Cross bottles.

16 23. T-Cross contends that it was not aware of the '208 patent, the use of the
17 SHOTSHELL mark by Marketing Specialists, and the existence of the SHOTSHELL Mark
18 Registration until the notification from Marketing Specialists on December 6, 2007.

19 24. T-Cross contends that Marketing Specialists has no trademark rights in the
20 SHOTSHELL mark because it is merely descriptive of Marketing Specialists' shotgun shell shaped
21 thermal insulated bottles and, therefore, the SHOTSHELL Mark Registration is invalid and
22 unenforceable.

23 25. On information and belief, Marketing Specialists has informed T-Cross' customer,
24 Wal-Mart Stores, Inc., that the T-Cross bottles infringe the '208 patent and the SHOTSHELL mark
25 and SHOTSHELL Mark Registration.

26 26. Marketing Specialists' accusations of infringement have damaged T-Cross.
27
28

27. Marketing Specialists' alleged trademark and patent infringement claims and threat to T-Cross' customer, Wal-Mart, Inc., have negatively impacted T-Cross' sales and relationship with Wal-Mart, Inc.

28. T-Cross has suffered irreparable injury, including damage to its reputation as a result of Marketing Specialists' conduct.

29. Marketing Specialists' conduct have placed T-Cross under a reasonable apprehension that T-Cross will be sued for what Marketing Specialists' believes is the infringement of trademark and patent rights allegedly owned by Marketing Specialists.

30. Accordingly, an actual controversy exists between T-Cross and Marketing Specialists as to whether T-Cross' manufacture, use or sale of its products infringes the '208 patent, whether the SHOTSHELL Mark Registration is valid, and whether the use of the SHOTSHELL mark by T-Cross infringes Marketing Specialists' alleged SHOTSHELL mark. Absent a declaration of non-infringement of patent and trademark, a declaration of invalidity and unenforceability of trademark, and an order canceling the SHOTSHELL Mark Registration, Marketing Specialists will continue to wrongly assert rights under the '208 patent, the SHOTSHELL mark, and the SHOTSHELL Mark Registration against T-Cross, and thereby cause T-Cross irreparable harm.

FIRST CAUSE OF ACTION

Declaratory Judgment of Non-Infringement of

United States Design Patent No. D495,208

31. T-Cross realleges and incorporates by reference paragraphs 1 through 30 of this Complaint as though fully set forth herein.

32. Marketing Specialists contends that the T-Cross bottles imported, made, used, sold, or offered for sale by T-Cross infringe the '208 patent.

33. T-Cross denies Marketing Specialists' contentions and alleges that the T-Cross bottles do not directly or indirectly infringe the '208 patent.

34. Marketing Specialists' accusations of infringement of the '208 patent have caused, and will continue to cause, damage to T-Cross.

35. On information and belief, Marketing Specialists is likely to continue its accusations of infringement of the '208 patent against T-Cross.

36. An actual controversy thus exists between T-Cross and Marketing Specialists as to whether the accused T-Cross bottles infringe the '208 patent.

37. Accordingly, T-Cross seeks and is entitled to a judgment against Marketing Specialist that it does not infringe and has not infringed, directly or indirectly, contributorily or by inducement, the '208 patent.

SECOND CAUSE OF ACTION

Declaratory Judgment of Invalidity and Unenforceability of Trademark and Non-Infringement of Trademark

38. T-Cross realleges and incorporates by reference paragraphs 1 through 37 of this Complaint as though fully set forth herein.

39. Marketing Specialists contends that the T-Cross bottles imported, made, used, sold, or offered for sale by T-Cross infringe the SHOTSHELL mark and the SHOTSHELL Mark Registration.

40. T-Cross denies Marketing Specialists' contentions and asserts that T-Cross' use of the "shotshell" wording in connection with the T-Cross bottles was to describe the shotgun shell shape (also known as "shotshell") of the T-Cross bottles.

41. Marketing Specialists' thermal insulated bottles sold under the SHOTSHELL mark is also in a shotgun shell shape. Marketing Specialists touts about the shotgun shell design of its thermal insulated bottles on the packaging of the products and its advertising materials. Marketing Specialists even categorizes its products as 12 gauge and 20 gauge to define their sizes. The term "gauge" is used to define the dimensions of a shotgun shell, not a thermal insulated bottle.

42. T-Cross contends that the SHOTSHELL mark does not function as a trademark because the SHOTSHELL mark merely describes the shape and characteristic of Marketing Specialists' shotgun shell shaped thermal insulated bottles. Pursuant to 15 U.S.C. § 1052(e), merely descriptive marks are not registrable on the Principle Register. Accordingly, the SHOTSHELL

1 mark, for use with Marketing Specialists' shotgun shell shaped thermal insulated bottles, is
2 incapable of exclusive appropriation as a trademark, and therefore should not be afforded with
3 trademark protection.

4 43. Further, the merely descriptive SHOTSHELL mark is incapable of distinguishing
5 Marketing Specialists' shotgun shell shaped thermal insulated bottles from third parties' shotgun
6 shell shaped products, including T-Cross', and therefore, the SHOTSHELL mark lacks a secondary
7 meaning. Due to the descriptiveness of the "shotshell" wording, consumers would not associate the
8 "shotshell" wording with only one source, particularly Marketing Specialists, for shotgun shell
9 shaped thermal insulated bottles or similar products. Consequently, there is no likelihood of
10 consumer confusion due to the use of the "shotshell" wording by T-Cross for the T-Cross bottles.

11 44. As such, Marketing Specialists' should not be allowed to prevent third parties,
12 including T-Cross, from advertising and describing their shotgun shell shaped products with a
13 descriptive term as "shotshell" by claiming trademark rights in the SHOTSHELL mark and under
14 the SHOTSHELL Mark Registration since the SHOTSHELL mark is merely descriptive of
15 Marketing Specialists' shotgun shell shaped thermal insulated bottles and does not function as a
16 trademark.

17 45. Marketing Specialists thus does not own any trademark rights in the SHOTSHELL
18 mark because it is merely descriptive, and, thus, the SHOTSHELL Mark Registration is invalid and
19 unenforceable.

20 46. Marketing Specialists' allegations of infringement are barred under the doctrines of
21 unclean hands and misuse.

22 47. Marketing Specialists' trademark rights in and to the SHOTSHELL mark are
23 unenforceable due to its unclean hands and misuse in asserting infringement of trademark rights
24 beyond that which it knows are valid and enforceable.

25 48. Marketing Specialists' accusations of trademark infringement have caused, and will
26 continue to cause, damage to T-Cross.

49. Marketing Specialists' accusations of infringement and threat of litigation regarding the SHOTSHELL Mark Registration have created a reasonable apprehension that T-Cross will be subject to liability if it continues to use the "shotshell" wording.

THIRD CAUSE OF ACTION

52. T-Cross realleges and incorporates by reference paragraphs 1 through 51 of this Complaint as though fully set forth herein.

//

Tel: (408) 286-8933
Fax: (408) 286-8932
olee@iplg.com
jmejia@iplg.com
maviguetero@iplg.com

Attorneys for Plaintiff
T-Cross

INTELLECTUAL PROPERTY LAW GROUP LLP
12 South First Street, Twelfth Floor
San Jose, California 95113

PRAYER FOR RELIEF

WHEREFORE, T-Cross prays for relief against Marketing Specialists as follows:

A. A declaration that T-Cross does not infringe the '208 patent;

B. A declaration that T-Cross' case against Marketing Specialists is an exceptional case within the meaning of 35 U.S.C. § 285;

C. A declaration that Marketing Specialists does not own trademark rights for the SHOTSHELL mark and the SHOTSHELL Mark Registration;

D. A declaration that Marketing Specialists' alleged SHOTSHELL mark and SHOTSHELL Mark Registration is invalid and unenforceable;

E. A declaration that T-Cross does not infringe the SHOTSHELL mark and the SHOTSHELL Mark Registration;

F. An Order permanently enjoining Marketing Specialists from asserting or threatening to assert infringement of the '208 patent, the SHOTSHELL mark, and the SHOTSHELL Mark Registration against T-Cross, from engaging in acts or conduct which suggests in any way that Marketing Specialists has the right to curtail any activity of T-Cross, and from prosecuting any action in any other Court to prevent T-Cross from using the SHOTSHELL wording;

G. An Order canceling registration of Marketing Specialists SHOTSHELL Mark Registration under 15 U.S.C. § 1119.

H. An award of costs and attorneys' fees to T-Cross; and

I. Such other and further relief as the Court deems just and reasonable.

Dated: May 8, 2008

INTELLECTUAL PROPERTY LAW
GROUP LLP

By:

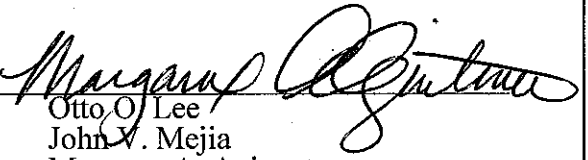

Otto O. Lee
John V. Mejia
Margaux A. Aviguetero
Intellectual Property Law Group LLP
12 S. First St., 12th Floor
San Jose, California 95113

EXHIBIT 1



US00D495208S1

(12) **United States Design Patent** (10) Patent No.: **US D495,208 S**
Putnam (45) Date of Patent: **** Aug. 31, 2004**

(54) **BEVERAGE VESSEL**

(75) Inventor: **Allen Putnam, Carson City, NV (US)**

(73) Assignee: **Marketing Specialists, Inc., Rogers, AR (US)**

(**) Term: **14 Years**

(21) Appl. No.: **29/196,509**

(22) Filed: **Dec. 30, 2003**

(51) LOC (7) Cl. **07-01**

(52) U.S. Cl. **D7/509; D7/300.1**

(58) Field of Search **D7/532, 523, 300, D7/300.1, 509, 510, 511, 533, 536; 206/218; 220/630, 23.86, 713, 703, 718, 705, 710.5, 714, 708; 215/396, 398, 307, 11.6; D9/505, 500; D26/11**

(56) **References Cited**

U.S. PATENT DOCUMENTS

2,776,691 A * 1/1957 Tupper 220/256.1
 2,782,614 A * 2/1957 Currie 220/718
 D265,974 S * 8/1982 Gombert D9/503
 D286,604 S * 11/1986 Bierlein et al. D7/523
 4,852,757 A * 8/1989 Gold 220/403
 5,020,680 A * 6/1991 Bale 215/11.6
 D371,304 S * 7/1996 Onneweer D9/503
 D374,147 S * 10/1996 Lillelund et al. D7/300.1

D377,293 S * 1/1997 Husted D7/510
 D386,644 S * 11/1997 Orrico et al. D7/300
 D387,619 S * 12/1997 Gross et al. D7/510
 D408,689 S * 4/1999 Kato D7/608
 D421,139 S * 2/2000 Garcia-Maldonado D26/11
 D424,875 S * 5/2000 Husted D7/510
 D428,768 S * 8/2000 Betras D7/510
 D451,760 S * 12/2001 Fox D7/510
 D451,761 S * 12/2001 Poly D7/523
 D471,064 S * 3/2003 Renz D7/523
 D472,101 S * 3/2003 Janky D7/532

* cited by examiner

Primary Examiner—M. N. Pandozzi

(57) **CLAIM**

The ornamental design for a beverage vessel, as shown.

DESCRIPTION

FIG. 1 is a perspective view of a beverage vessel showing my new design;

FIG. 2 is an exploded perspective view thereof;

FIG. 3 is an side elevation view thereof; all other side elevation views being identical.

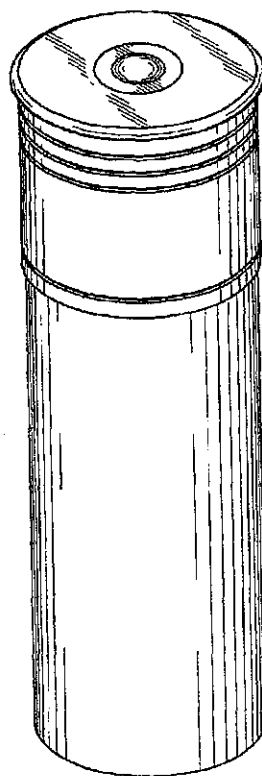
FIG. 4 is an exploded side elevation view thereof;

FIG. 5 is a top plan view thereof; and,

FIG. 6 is a bottom plan view thereof.

The broken lines in the drawings are for illustrative purposes only and form no part of the claimed design.

1 Claim, 4 Drawing Sheets



U.S. Patent

Aug. 31, 2004

Sheet 1 of 4

US D495,208 S

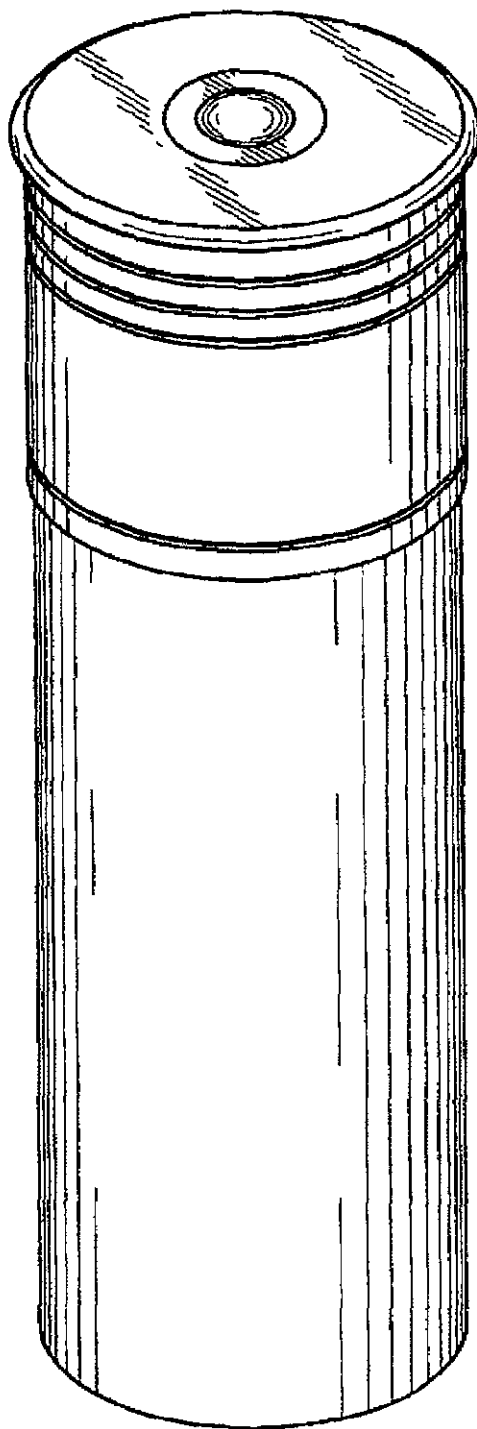


Fig. 1

U.S. Patent

Aug. 31, 2004

Sheet 2 of 4

US D495,208 S

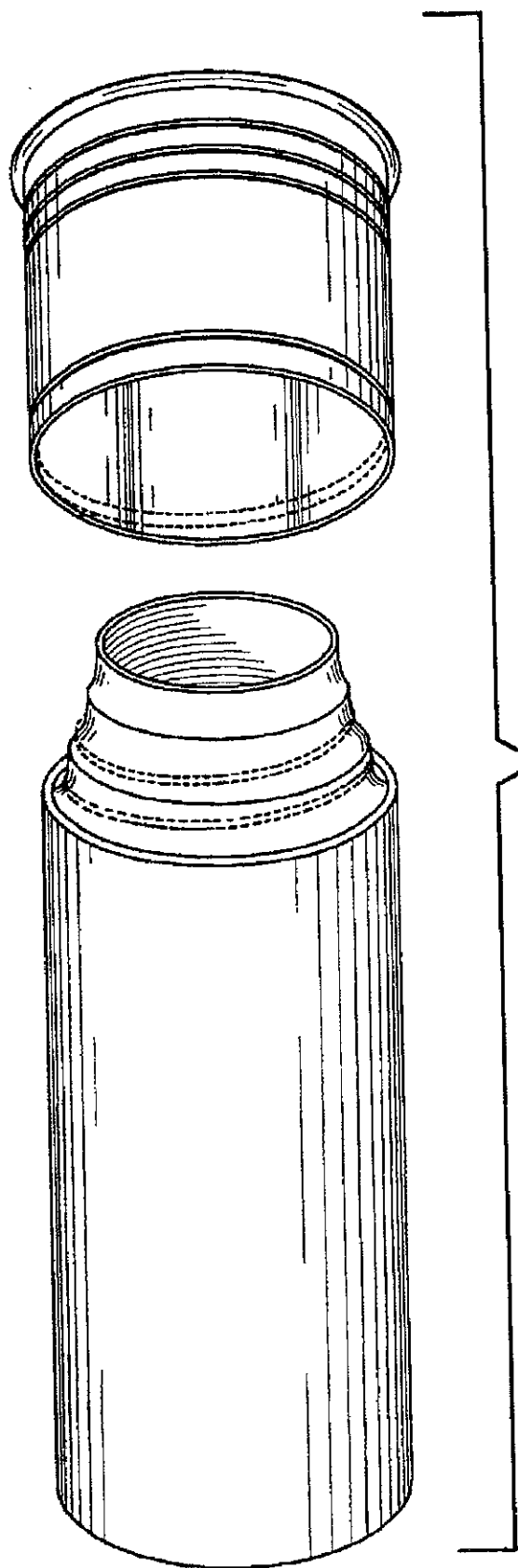


Fig. 2

U.S. Patent

Aug. 31, 2004

Sheet 3 of 4

US D495,208 S

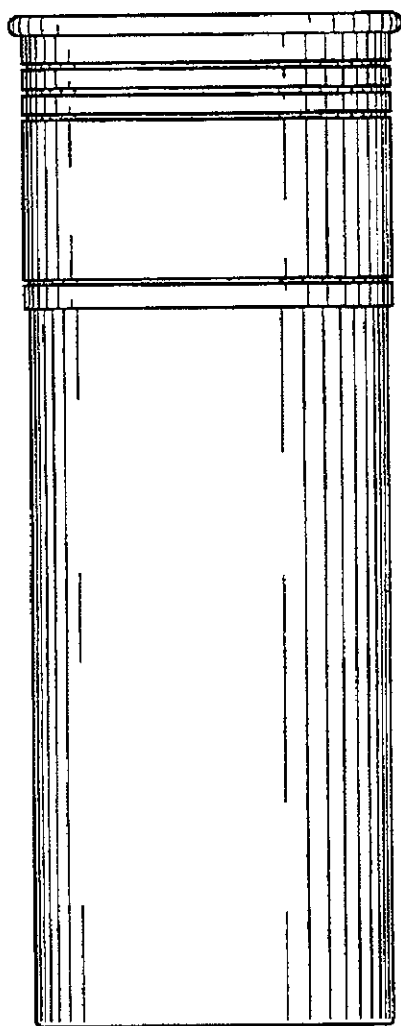


Fig. 3

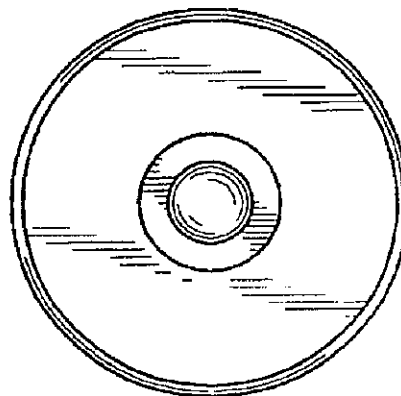


Fig. 5

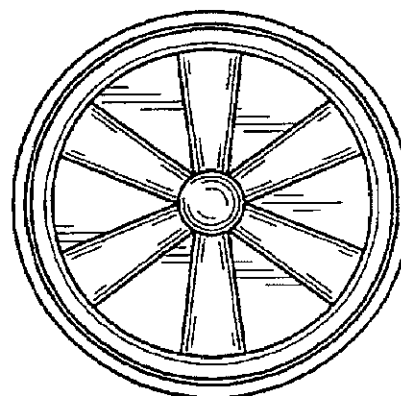


Fig. 6

U.S. Patent

Aug. 31, 2004

Sheet 4 of 4

US D495,208 S

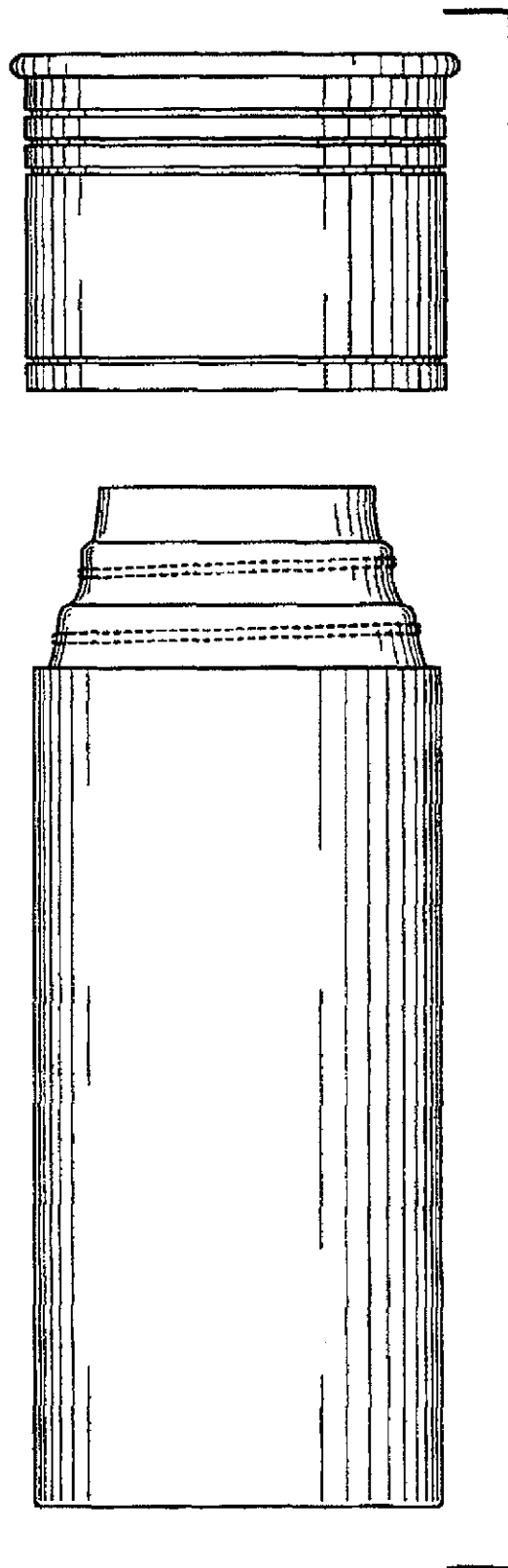


Fig. 4

EXHIBIT 2



United States Patent and Trademark Office

[Home](#) | [Site Index](#) | [Search](#) | [FAQ](#) | [Glossary](#) | [Guides](#) | [Contacts](#) | [eBusiness](#) | [eBiz alerts](#) | [News](#) | [Help](#)

Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Thu Feb 21 04:10:30 EST 2008

[TESS HOME](#) [NEW USER](#) [STRUCTURED](#) [FREE FORM](#) [BROWSE DICT](#) [SEARCH OG](#) [BOTTOM](#) [HELP](#) [PREV LIST](#) [CURR LIST](#) [NEXT LIST](#)
[FIRST DOC](#) [PREV DOC](#) [NEXT DOC](#) [LAST DOC](#)

[Logout](#) Please logout when you are done to release system resources allocated for you.

[Start](#) List At: OR [Jump](#) to record: **Record 3 out of 4**

[TARR Status](#) [ASSIGN Status](#) [TDR](#) [TTAB Status](#) (Use the "Back" button of the Internet
Browser to return to TESS)

SHOTSHELL

Word Mark SHOTSHELL
Goods and Services IC 021. US 002 013 023 029 030 033 040 050. G & S: THERMAL INSULATED BOTTLES FOR BEVERAGES. FIRST USE: 20050100. FIRST USE IN COMMERCE: 20050100
Standard Characters
Claimed
Mark Drawing Code (4) STANDARD CHARACTER MARK
Serial Number 76559932
Filing Date November 3, 2003
Current Filing Basis 1A
Original Filing Basis 1B
Published for Opposition November 9, 2004
Registration Number 3004807
Registration Date October 4, 2005
Owner (REGISTRANT) Marketing Specialists, Inc. CORPORATION ARKANSAS 416 W. Stribling Drive Rogers ARKANSAS 72756
Attorney of Record Roger C. Clapp
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

[TESS HOME](#) [NEW USER](#) [STRUCTURED](#) [FREE FORM](#) [BROWSE DICT](#) [SEARCH OG](#) [TOP](#) [HELP](#) [PREV LIST](#) [CURR LIST](#) [NEXT LIST](#)
[FIRST DOC](#) [PREV DOC](#) [NEXT DOC](#) [LAST DOC](#)

JS 44 (Rev. 12/07) (cand rev 1-16-08)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

I. (a) PLAINTIFFS

T-Cross, a South Korean sole proprietorship

DEFENDANTS

Marketing Specialists, Inc., an Arkansas corporation

(b) County of Residence of First Listed Plaintiff: South Korea
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant: [blank] County
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Otto O. Lee, John V. Mejia, and Margaux A. Aviguetero
INTELLECTUAL PROPERTY LAW GROUP LLP
12 S. First St., 12th Floor
San Jose, CA 95113

Attorneys (If Known)

Boyd D. Cox
75 N. East Ave., Suite 506
Fayetteville, AR 72701

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT		TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury—Med. Malpractice	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment	
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury—Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust	
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 450 Commerce	
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 440 Consumer Credit	<input type="checkbox"/> 460 Deportation	
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	<input type="checkbox"/> 480 Consumer Credit	
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 810 Selective Service	
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410	
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 876 HIA (1395ff)	<input type="checkbox"/> 882 Economic Stabilization Act	
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 530 General		<input type="checkbox"/> 882 DIWC/DIWW (405(g))	<input type="checkbox"/> 891 Agricultural Acts	
<input type="checkbox"/> 190 Other Contract		<input type="checkbox"/> 535 Death Penalty		<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 892 Environmental Matters	
<input type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 540 Mandamus & Other		<input type="checkbox"/> 865 RS1 (405(g))	<input type="checkbox"/> 894 Energy Allocation Act	
<input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 550 Civil Rights			<input type="checkbox"/> 895 Freedom of Information Act	
		<input type="checkbox"/> 555 Prison Condition			<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice	
					<input type="checkbox"/> 950 Constitutionality of State Statutes	
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	SOCIAL SECURITY		
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 861 HIA (1395ff)		
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 530 General	<input type="checkbox"/> 720 Labor/Mgmt. Relations & Disclosure Act	<input type="checkbox"/> 862 Black Lung (923)		
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))		
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 864 SSID Title XVI		
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 865 RS1 (405(g))		
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act			
	<input type="checkbox"/> 440 Other Civil Rights					
			IMMIGRATION	FEDERAL TAX SUITS		
			<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)		
			<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609		
			<input type="checkbox"/> 465 Other Immigration Actions			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 USC, §§ 1051, et seq., (trademark action) and 35 USC §§ 1, et seq. (patent action).

Brief description of cause:

Request for declaratory judgment of non-infringement of patent and request for an Order cancelling a registered mark

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION DEMAND \$
UNDER F.R.C.P. 23

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE
"NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)

☐ SAN FRANCISCO/OAKLAND
☒ SAN JOSE

DATE
May 8, 2008

SIGNATURE OF ATTORNEY OF RECORD

